UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STANDARD INVESTMENT CHARTERED, INC.
On behalf of itself and all others similarly situated,

Plaintiff,

v.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. (a/k/a **"NASD"**); **NYSE GROUP, INC.; MARY L. SCHAPIRO; RICHARD F. BRUECKNER** and **BARBARA Z. SWEENEY**

Defendants.

JUDGE BATTS

07 CV 2014

Case No.

CLASS ACTION

JURY TRIAL DEMANDED

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COMPLAINT

INTRODUCTION

Plaintiff Standard Investment Chartered, Inc. ("Standard" or "Plaintiff"), for its Complaint against defendants National Association of Securities Dealers, Inc. ("NASD"), NYSE Group, Inc. ("NYSE"), Mary L. Schapiro, Richard F. Brueckner and Barbara Z. Sweeney, alleges upon information and belief as to investigation of counsel as follows:

1. This is a Class Action brought against the defendants that challenges the fairness to NASD members of the NASD-NYSE regulatory consolidation ("the Transaction"). Among other things, it seeks an injunction to prevent a proposed plan to consolidate NASD and NYSE from becoming effective in the absence of a proxy statement that is fair, balanced, accurate, informative and complete; to enjoin certain proposed by-law and other governance changes; and to recover damages on behalf of Plaintiff and the members of the Class defined below. The gravaman of this complaint is that the terms of the consolidation represent a massively unfair

disenfranchisement of NASD members, and that their consent thereto was obtained only through a "bum's rush" campaign that included millions of dollars in public relations ballyhoo, a one-sided, conclusory proxy that failed to explain how critical choices were arrived at, uniform cash payments and dues credits that appear to be little more than a monetary inducement to small NASD firms to exercise their votes under the "one firm, one vote" so as to create an apparent stampede in favor of the Transaction, an abbreviated period of one month for members to consider their votes (during the holiday season) and an undocumented threat of federal regulatory intervention unless the Transaction was approved. It is particularly dangerous, disappointing, ironic and disingenuous that those responsible for self-regulating our nation's securities markets would employ such tactics, which include a proxy statement that could not possibly pass master under the nation's securities laws.

2. This action is brought on behalf of the Class consisting of all members of record of NASD at the time of a Special Meeting of Members held on January 19, 2007 ("Special Meeting"), as set forth in detail below.

JURISDICTION AND VENUE

3. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because there is diversity of citizenship between at least one Class Member (the plaintiff) and each defendant, and the matter in controversy seeks damages in excess of $5,000,000.

PARTIES

4. Plaintiff Standard is a California corporation with its principal place of business in Tustin, Orange County, California. At the time of the Special Meeting and at all other times relevant, Plaintiff was a member of NASD.

5. Defendant NASD is a not-for-profit corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1735 K Street, NW, Washington, D.C. 20006.

6. NASD is a self-regulatory agency ("SRO") which was established initially to regulate the conduct of brokers and dealers in securities, and to deal with customer disputes.

7. NASD is also a membership organization. It has approximately 5,100 members, of which only about 200 are also members of NYSE.

8. NASD has a huge amount of assets. Its 2005 annual report reflects member's equity of $1,611,254,000! Over the past years, NASD sold its interest in the NASDAQ trading market. According to The Wall Street Journal, NASD received approximately $1.5 billion from the sale of the NASDAQ stock market. (WSJ 12/15/05).

9. Defendant NYSE is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 11 Wall Street, New York, NY 10005. NYSE is an SRO which operates to regulate the conduct of its members and to deal with customer disputes. NYSE is the successor in interest to the New York Stock Exchange which, in March, 2006 was merged with Archipelago Holdings, Inc., a profit-making corporation. NYSE is now a publicly traded security that trades on the NYSE.

10. Defendant Mary L. Schapiro is an individual who is a citizen of the District of Columbia who serves as Chairman and CEO of NASD. Upon consummation of the transaction described below, Ms. Schapiro will become Chief Executive Officer of the combined entity. Ms. Schapiro has been actively involved in urging acceptance of the Transaction.

11. Defendant Richard F. Brueckner is an individual who is a citizen of the State of Virginia. He is the Presiding Governor of NASD's Board of Governors. Like Ms. Schapiro, he has been actively involved in promoting the transaction.

12. Defendant Barbara Z. Sweeney is an individual who is a citizen of the District of Columbia. She serves as NASD's Senior Vice President and Corporate Secretary. On information and belief, she too, has been actively involved in promoting the Transaction.

FACTUAL BACKGROUND

13. On November 28, 2006, NASD and NYSE announced the Transaction — a plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms doing business with the public. The combined organization would be responsible for all member firm regulation, arbitration and mediation, and all other current NASD responsibilities, including market regulation by contract for NASDAQ, the America Stock Exchange, and the International Securities Exchange. In addition, the combined organization will be responsible for the professional training, testing and licensing of registered persons, and industry utilities, such as Trade Reporting Facilities and other over-the-counter operations. At the closing of the Transaction, NASD will adopt a new corporate name. The newly-named entity is referred to herein as the "New SRO."

14. The Transaction requires NASD to amend its by-laws. That by-law change requires a vote of NASD membership. The defendants did not promulgate the proxy statement in support of the Transaction until December 14, 2006, the day before the beginning of Chanukah. It scheduled a vote on January 19, 2007, immediately after the Holiday season.

15. The one-sided proxy materials do not even purport to describe the "downsides" of the Transaction, any analysis of alternative scenarios or any balance at all. Rather, NASD promulgated an advocacy piece replete with conclusory, one-sided statements, and little if any analysis of alternatives. The Transaction was announced in a press conference with the Chairman of the Securities and Exchange Commission, and the announcement was followed by a national tour akin to the road shows that investment banks employ to promote securities offerings. Opponents used the threat of immediate SEC intervention in the absence of approval of the Transaction as a club to secure approval.

16. Proponents strongly tout the Transaction as promoting efficiencies. The proxy materials do not spell them out, quantify them or explain them. Equally important, they do not explain why this Transaction is the best means of achieving their stated goals. Providing few details, they argue that the Transaction will make private-sector regulation more efficient and effective. The Transaction is designed to accomplish the establishment of a single SRO to serve as the sole U.S. private-sector provider of member firm regulation for securities firms doing business with the public.

17. The Transaction is designed by its proponents to offer member firms, according to such proponents, the following purported "benefits":

- In connection with the Transaction, a one-time special member payment will be made to members in the amount of $35,000 per member;
- The Gross Income Assessment to members — a firm's annual dues to NASD — will be reduced by $1,200 per year for five years, subject to annual Board approval;
- It is expected that the New SRO will benefit from economies of scale and will be able to reduce regulatory fees starting in the third year after the closing of the Transaction; and
- The new governance structure guarantees industry participation that ensures fair and balanced member representation on the Board.

18. Following the consummation of the Transaction, NASD's "one firm, one vote" rule will be replaced by a 23-person Board of Governors elected as follows:

- Ten governors will be from inside the securities industry;
- Small firms (1-150 registered representatives) elect three seats;
- Mid-size firms (151-499 registered representatives) elect one seat;
- Large firms (500+ registered representatives) elect three seats;
- Three appointed industry seats: one each for NYSE floor members, independent dealers/insurance affiliates and investment company affiliates;
- Eleven governors will be appointed from outside the securities industry;
- The Chief Executive Officer will serve on the Board of Governors;
- The Chief Executive Officer of NYSE Regulation, Inc. will serve on the Board of Governors for a three-year transitional period, after which such seat automatically will be terminated and the authorized number of members of the Board will be reduced by one.

19. A fundamental aspect of the Transaction requires that the NASD by-laws be amended to implement the new governance structure of the New SRO.

20. In fact, while the Transaction seems to have surface appeal, it is the consolidation of two entities with very different memberships and interests. Unlike the NYSE, the NASD has many small and medium sized firms. These firms operate under the "one firm, one vote" rule in electing NASD's Board which governs or manages the NASD. Of the approximately 5,100 NASD members, only about 200 of the largest and more prominent are members of the older NYSE.

21. The Transaction is unfair to NASD members on both economic and governance grounds. As to governance, the Transaction is unfair to the extent that NASD members, despite the greater size of the membership of NASD as compared to NYSE, will have their influence

over the New SRO substantially diluted, leaving control of it, *de facto*, in the hands of the member firms of the NYSE and the individual defendants.

22. On economic grounds, the 5,100 members of NASD have a huge stake in the assets of NASD, including the approximately $1.5 billion from the sale of NASDAQ. According to some estimates, the per member allocation should have been $135,000, or more. As detailed in the proxy statement, see paragraphs 28-34, below, the only monetary benefits that will flow to NASD members will be a one-time payment of $35,000 per member, regardless of size, term of membership or financial stake in NASD's assets, and a $1,200 per year reduction in the gross assessment per year for five years regardless of size or term of membership. Collectively these are referred to as "the monetary inducements."

23. For some small firms, the monetary inducements provide a strong financial incentive to vote "yes" on the proposed consolidation, especially in light of the explanation of the Transaction's proponents that the "special member payment" of $35,000 will be payable on the closing of the Transaction, and the bald statement that "[a] larger payment is not possible" because a higher payment could "seriously jeopardize" NASD's status as a tax-exempt organization. Similarly, the $1,200 per year flat assessment "is the minimum annual gross assessment charge." The proxy materials do not:

* provide any opinion of tax counsel supporting proponents' statements about the tax impact of alternative courses;

* provide any "fairness opinion" supporting the fairness of the transaction to NASD members;

* explain how the proponents arrived at the $35,000 figure, except to make the claim that the payment to be made at closing will be funded by the "expected" value of the incremental

cash flows that will be produced by the Transaction (and this is contingent on the approval of the deal);

* explain how the total payments of approximately $175 million (presumably arrived at by multiplying $35,000 times 5,000 NASD members) will be financed;

* explain why the payment is a flat payment;

* explain why it is being paid at closing when it represents cost savings that will be achieved over five years;

* explain what, if any, consequences will flow if the expected cost savings are not achieved;

* explain why the $1,200 per year payment was set at a number that exactly equals the annual gross assessment that approximately 2,400 NASD members pay;

* explain what will become of the NASD members' interest in NASD's equity; or

* explain whether alternatives for distributing that equity were considered, evaluated or discussed.

24. The terms and conditions of the Transaction were assembled behind closed doors and were largely dictated by large securities brokerage firms which are members of both NYSE and the NASD with very little or no participation by NASD rank-and-file members. The terms and conditions are manifestly unfair to those members of NASD which are not also members of NYSE. Indeed, before negotiating the Transaction, the defendants specifically avoided or were negligent in not seeking opinions as to the fairness of the Transaction to the members of NASD, either from a financial point of view or otherwise. Additionally, defendants Schapiro, Brueckner and Sweeney, in negotiating such terms and conditions, essentially sacrificed the interests of those whom they were obligated to protect *i.e.*, Plaintiff and the members of the Class.

25. Despite the manifest unfairness of the terms and conditions of the Transaction to NASD members, NASD, acting through various of its member firms including, upon information and belief, Goldman Sachs, Pershing, ING and Sterne Agee, used the implied threat of withdrawal of business opportunities and other benefits to pressure NASD member firms which were economically dependent upon the NYSE member firms to vote at or before the Special Meeting in favor of the Transaction even though a vote in favor of the Transaction was not in most NASD members' best interests.

26. In particular, had there been a fair allocation of the assets of NASD to Plaintiff and the members of the Class, the per member allocation would and should have been approximately $135,000 each as compared to the $35,000 that will be received by them upon the consummation of the Transaction. Further, the Transaction is unfair to the extent that NASD members, despite the greater size of the membership of NASD as compared to NYSE, will have their influence over the New SRO substantially diluted, leaving control of it, *de facto*, in the hands of the member firms of the NYSE and the individual defendants. Instead of voting on all directors, NASD members will vote for only three of 23 directors, depending on their size.

27. In order to obtain approval of the membership of the NASD, the defendants caused to be issued and disseminated a Proxy Statement dated December 14, 2006 ("Proxy Statement") with respect to the voting upon the Transaction, which voting by NASD members was to and did take place at the Special Meeting.

THE PROXY STATEMENT

28. The Proxy Statement was prepared jointly by NASD and NYSE and was disseminated to NASD member firms with a cover letter signed by defendants Schapiro and Brueckner and a formal Notice of the Special Meeting signed by defendant Sweeney.

29. With respect to the "special member payment" and other terms and conditions of the Transaction, the Proxy Statement represented at page 4:

> "The consolidation will reduce the costs of regulation. In connection with the Transaction, a one-time special member payment will be made to NASD members. The special member payment will be $35,000 per NASD member. In addition, we will discount the annual gross income assessment to members for a period of five years, subject to annual Board approval. Each firm would receive a discount of $1,200 per year, which is the minimum annual gross income assessment charge and the total amount of the annual gross income assessment that approximately 2, 400 member firms pay. As a result of this discount, the approximately 2,400 member firms currently paying the minimum would pay no gross income assessments charge over the five-year period. It is expected that we will benefit from economies of scale and will be able to reduce regulatory fees starting in the third year after the closing of the Transaction.
>
> Firms that today are regulated by both NASD and NYSE Regulation will benefit from the elimination of the current duplication of regulatory review of these firms. The Transaction will further benefit all NASD members as it will streamline the broker-dealer regulatory system, combine technologies, and establish organization — all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, we are committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.
>
> As a result of the By-Law amendments, members will no longer have the ability to vote for all Board candidates in elections, but will have an opportunity to vote on designated seats on the Board. Specifically, firms will vote for industry nominees that are similar in size to their own firm. This means that small firms and large firms will vote for candidates running for the seats reserved for their firm size and the mid-sized firms will likewise vote for the mid-sized firm seat. All other Board seats will be appointed. All members will continue to have the ability to vote on any future By-Law amendments, as well as district elections. In addition, the New SRO will continue NASD's current practice of subject-matter expert standing committees and NASD's current notice and comment process for rule-making.
>
> To further encourage small firm input and participation, NASD has enhanced the existing Small Firm Advisory Board by making half of the seats elected. The Small Firm Advisory Board will continue to review New SRO rules and make recommendations to the Board of Governors."

30. The Proxy Statement was accompanied by a form of proxy as well as instructions for the various means by which NASD members could vote upon the proposed Transaction.

31. The Proxy Statement, with the explicit knowledge of the defendants and their respective legal counsel and advisors, was intended to and did deceive a majority of the members of NASD into believing that the Transaction was beneficial to them. Ultimately, due to the deceptive nature of the Proxy Statement as provided herein, together with the pressures put upon many of the smaller firms which are members of NASD by NYSE member firms, the Transaction was approved by a substantial majority at the Special Meeting.

32. The Proxy Statement was skewed toward implying that the "special member payment" of $35,000 was the maximum amount payable to NASD members due to NASD's status as a not-for-profit corporation and, in any event, because it and the other terms and conditions of the Transaction were purportedly fair to NASD members.

33. In fact, the Proxy Statement was materially deficient because, despite the explicit knowledge of the defendants, it:

a. failed to disclose that, in fact, the defendants did not seek, in advance of negotiating the economic terms of the Transaction, an independent valuation of the NASD membership interests to be given up;

b. failed to disclose that, in fact, the defendants did not seek, in advance of negotiating the governance and other terms and conditions of the Transaction, an independent valuation of the NASD membership rights to be given up;

c. failed to disclose that the defendants elected not to include in the Proxy Statement opinions of taxation experts as to the propriety of paying NASD members more than $35,000 per membership or the views of the Internal Revenue Service with respect thereto because such opinions and views were, at best, ambiguous and not supportive of the statement in the Proxy Statement that appears at p. 7 in purported response to the question:

"Can NASD increase the amount of the $35,000 one-time special member payment?" And the answer:

"A larger payment is not possible. NASD is a tax-exempt organization and therefore is limited by tax laws regarding size and source of payments it can make to its members. The special member payment of $35,000 per NASD member, or approximately $175.0 million in the aggregate, will be funded by—and therefore limited by—the expected value of the incremental cash flows that will be produced by the consolidation transaction. If the special member payment was higher, it could seriously jeopardize NASD's status as a tax-exempt organization, which would result in significantly higher fees for firms."

d. failed to disclose that defendants decided not to consider alternative transactions including, *inter alia*, one in which NASD would have given up its tax-exempt status, one which would otherwise have generated more than $35,000 per NASD member or one which would have transferred all of NASD's regulatory functions to New SRO without collapsing NASD.

e. failed to disclose that and the extent to which, prior to the issuance of the Proxy Statement, NYSE member firms were applying undue pressure to NASD member firms to approve the Transaction at or in connection with the Special Meeting, notwithstanding the fact that the Transaction would negatively impact upon NASD member firms not members of NYSE.

f. failed to disclose that NASD members' loss of rights to vote for all directors of the New SRO's Board of Directors was likely to have a negative impact upon the proclaimed long-term economics of the Transaction including, *inter alia*, whether the elimination of the $1,200 fee or any other fee payable by NASD members beyond three years would be continued.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action on its own behalf and as a Class Action under F.R.C.P. 23(b)(2) and (b)(3) on behalf of the members of the Class as defined below.

35. The Class consists of all persons who were members of the NASD and entitled to vote at the Special Meeting. The definition of the Class is subject to amendment following discovery with respect thereto.

Numerosity

36. The members of the Class are so numerous that joinder of all members is impractical. While the exact number of members of the Class is unknown to Plaintiff at this

time, it appears that the Class includes more than 5,000 persons or entities that are members of NASD.

Typicality

37. Plaintiff's claims are typical of absent Class members' claims. Plaintiff and the members of the Class will be irreparably damaged if the Transaction is consummated and have sustained and will sustain damages in an identical manner. Further, their claims arise from the same factual background and legal theories.

Adequacy of Representation

38. Plaintiff will fairly and adequately protect the interests of absent members of the Class and has retained counsel competent and experienced in litigating complex litigation such as this case. Plaintiff's interests are coincident with, and not antagonistic to, the interests of absent members of the Class because, by proving its individual claims, Plaintiff will necessarily prove defendants' liability as to the respective Class members' claims. Plaintiff is also cognizant of, and determined to, faithfully discharge its fiduciary duties to the absent members of the Class.

Superiority

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation effectively makes it impossible for members of the Class to seek redress individually for the wrongs complained of herein.

Manageability

40. There are no unusual difficulties likely to be encountered in the management of this action as a Class Action that could not be managed by this Court.

41. The advantages of maintaining the action as a Class Action far outweigh the expense and waste of judicial effort that would result in hundreds of separate adjudications of these issues for each member of the Class.

42. Class treatment further insures uniformity and consistency in results and will provide optimum compensation for members of the Class for their injuries and protects them from the irreparable harm that will befall members of the Class if the Transaction is consummated.

Universally Applicable Conduct

43. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to members of the Class as a whole and certification of the Class under Rule 23(b)(2) proper.

Predominance and Commonality

44. The questions of law and fact common to the claims of each member of the Class overwhelmingly predominate over any questions of law or fact affecting only individual members thereof. Questions of law and fact common to the Class include, but are not necessarily limited to, the following:

(a) Whether defendants disseminated a false and misleading Proxy Statement to NASD members to fraudulently induce them to vote in favor of the Transaction;

(b) Whether Plaintiffs and the members of the Class have been and/or will be injured if the Transaction is consummated; and

(c) What is the measure of the economic and non-economic damages that will be sustained by Plaintiff and the members of the Class if the Transaction is consummated?

COUNT I

BREACH OF FIDUCIARY DUTY

45. Plaintiff repeats and realleges each and every allegation set forth above as though stated more fully herein.

46. The defendants to this Count are defendants Schapiro, Brueckner and Sweeney, each of whom, by virtue of their senior positions as executives of NASD, owes fiduciary duties to Plaintiff and members of the Class. Such duties include, *inter alia,* the duties of loyalty and candor.

47. By causing the terms and conditions of the Transaction to be negotiated as they were, and actively participating in such negotiations as the purported representatives of all the members of NASD, they breached their fiduciary duties owed to Plaintiff and the members of the Class. In acting as they did, they were more interested in negotiating the Transaction, which, if consummated, will yield to them important employment and financial benefits from the New SRO at the expense of the interests of most of the members of NASD.

48. By participating in the drafting and the dissemination of the Proxy Statement, which they knew or should have known was deceptive, they breached their duties of candor owed to Plaintiff and members of the Class.

49. As a result of the individual defendants' breaches of fiduciary duty to them, Plaintiff and members of the Class will be irreparably harmed and will be otherwise damaged in an amount, which cannot presently be calculated, if the Transaction is consummated.

COUNT II

NEGLIGENT MISREPRESENTATION

50. Plaintiff repeats and realleges each and every allegation set forth above as though stated more fully herein.

51. All defendants are defendants to this Count.

52. As indicated above, the Proxy Statement misrepresented material facts with respect to the Transaction and omitted other material facts that should have been disclosed in connection therewith.

53. In participating in the drafting and ultimately disseminating the Proxy Statement, each of the defendants negligently caused statements to be made therein which they knew or should have known would negatively impact NASD's corporate suffrage process and mislead members of the Class with respect to, *inter alia*, the Transaction and the circumstances surrounding its negotiation.

54. As a direct consequence of the defendants' negligent misrepresentations of material facts in the Proxy Statement and omission of material facts therefrom, Plaintiff and members of the Class will be irreparably harmed and will be otherwise damaged in an amount which cannot presently be calculated if the Transaction is consummated.

COUNT III

UNJUST ENRICHMENT

55. Plaintiff repeats and realleges each and every allegation set forth above as though stated more fully herein.

56. NYSE and the individual defendants are defendants to this Count.

57. If the Transaction is consummated, the defendants to this Count will be unjustly enriched at the expense of Plaintiff and members of the Class. In the case of NYSE, upon the consummation of the Transaction, it will inherit a substantial pool of assets and other tangible

and intangible benefits not capable of being presently calculated, for which benefits it will not have paid to NASD or its members fair consideration.

58. If the Transaction is consummated, defendants Schapiro, Brueckner and Sweeney will receive employment and other benefits beyond those to which they are entitled in their present roles with NASD. None of these additional benefits will have been earned by them but were and are, nevertheless, an important factor in the carrying out the roles that they did in connection with the Transaction.

59. Defendants voluntarily are accepting these benefits that are being conferred upon them involuntarily by Plaintiff and the members of the Class and will be retaining such benefits unjustly should the Transaction be consummated.

60. Plaintiff and the members of the Class are entitled to damages as a result of the defendants' unjust enrichment, including the disgorgement of all monies unlawfully accepted and to be accepted and retained following consummation of the Transaction by defendants from New SRO and from Plaintiff and the members of the Class, as well as the earnings thereupon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the defendants as follows:

a. certifying this action as a Class Action, with Plaintiff and its counsel as the representatives of the Class;

b. enjoining defendants from consummating the Transaction;

c. enjoining defendants from effectively disenfranchising members of NASD from the corporate governance of New SRO following the consummation of the Transaction, should the Court permit it to proceed;

d. ordering the preparation of a proxy statement which fully and adequately discloses all material facts and which provides for a new special meeting of members of NASD to be held under supervision of the Court;

e. awarding to Plaintiff and the members of the Class compensatory and punitive damages as appropriate;

e. requiring defendants to account for their unjust enrichment and requiring them to pay over the amount thereof to Plaintiff and the members of the Class together with the earnings thereupon;

f. awarding Plaintiff its costs of suit, including reasonable attorneys' and experts' fees; and

g. such other and further relief as is just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all Counts so triable.

March 8, 2007

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